

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of the)
City of San Jose and the Sun Garden)
Packing Company for Review of)
Resolution No. 75-2 of the California)
Regional Water Quality Control Board,)
San Francisco Bay Region)

Order No. WQ 75-9

BY THE BOARD:

On January 31, 1975, the City of San Jose (City) and on February 10, 1975, the Sun Garden Packing Co. (Sun Garden) requested the State Water Resources Control Board (State Board) to review Resolution No. 75-2 of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board). Resolution No. 75-2, adopted on January 21, 1975, requested the Attorney General to take appropriate action against the City and Sun Garden under Section 13386 of the Water Code.

I. BACKGROUND

Sun Garden operates an apricot and tomato canning facility located at the junction of Alma Avenue and South First Street, San Jose, California. This is near the confluence of the southern end of San Francisco Bay and the Guadalupe River. Sun Garden normally discharges its sewage, process water, and cannery waste to the City's sanitary sewer system. In addition, during wet weather, runoff from the plant area flows into storm drains on Sun Garden's property. These drains are connected

to the City's storm sewer which discharges through the Edwards Outfall to the Guadalupe River. Sun Garden does not have waste discharge requirements which would permit discharge of sewage, process water or cannery waste in or through the storm drains. Neither does the City.

On August 8 and 9, 1974, Sun Garden's waste discharge overflowed from two sanitary system manholes located in Sun Garden's yard, discharged into a storm drain which was connected to the City's storm sewer, and subsequently flowed into the Guadalupe River at the Edwards Outfall. The Guadalupe River constitutes waters of the State and navigable waters of the United States. A substantial fish kill resulted from the discharge, and gray-colored cannery wastes blanketed the bed of the Guadalupe River for about one and one-half to two miles downstream of the outfall.

II. GENERAL CONTENTIONS

Each petitioner makes three similar contentions in support of their claim that the Regional Board's action in referring the matter to the Attorney General for appropriate action was inappropriate and improper. First, it is claimed that the discharge had a negligible effect on beneficial uses. Second, the petitioners contend that the discharge was insignificant in quantity. Third, each petitioner claims that the discharge was beyond the reasonable control of that petitioner. Each petitioner claims that the discharge resulted exclusively from actions of the other petitioner.

III. FINDINGS AND CONCLUSION

As a matter of policy, we will not ordinarily review a discretionary referral by a Regional Board to the Attorney General. In Order No. WQ 73-25 we indicated that:

"... [I]n general a request by the executive officer of a regional board for the Attorney General to take 'appropriate enforcement action' in connection with violations of Board orders is an administrative action which should not be review by this Board. What constitutes 'appropriate enforcement action' should be determined by the Attorney General in consultation with the Board and its legal staff and, ultimately, by the court in those cases where a court action is filed. Hereafter, petitions for review of such requests by regional board executive officers will not be accepted."

We believe the same ~~considerations~~ and approach should apply to discretionary reference by a Regional Board to the Attorney General under Water Code Section 13386. Hereafter, petitions for review of such actions should not be accepted and petitioners should be so notified by the Executive Officer of the State Board.

IV. ORDER

IT IS HEREBY ORDERED that the petitions of the City of San Jose and of Sun Garden Packing Company are denied.

Dated: April 17, 1975

/s/ W. W. Adams
W. W. Adams, Chairman

/s/ W. Don Maughan
W. Don Maughan, Vice Chairman

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member